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U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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June 7, 2006

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The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Martin:

We are writing to express our opposition to any Federal Communications Commission order that would impose multicast must-carry obligations on cable or satellite operators, or any other provider of video programming. We believe that any such order would be inconsistent with the existing must-carry provisions in sections 614 and 615 of the Communications Act. Moreover, we believe that allowing each broadcaster to force video distributors to carry multiple streams of the broadcaster's programming rather than letting consumer preferences and market forces operate is contrary to the market-oriented philosophy that has guided communications policy during the Bush Administration.

In addition, Congress recently enacted comprehensive digital-television legislation in the Deficit Reduction Act (P.L. 109-171). That legislation did not include a requirement that multichannel video programming distributors (MVPDs) carry multiple streams of a broadcaster's programming despite broadcaster advocacy for the legislation to include such a requirement. Given this, it would be inappropriate for the Commission to attempt to do so by regulatory fiat now.

The Commission has already twice rejected requests by broadcasters to require multicast must-carry: once in 2001 under Chairman Kennard and again in 2005 under Chairman Powell. In those decisions the Commission concluded, among other things, that the statutory language allowing broadcasters to compel carriage of their "primary video" transmission means carriage of a single stream, and that Congress would need to amend the statute before the Commission could require otherwise. We agree. If Congress had intended to require carriage of multiple streams, it would have explicitly

done so either in the original must-carry provisions or in the digital televisions provisions of the Deficit Reduction Act.

Forcing carriage of additional broadcast streams would only reduce the amount of capacity available for non-broadcast programming at a time when consumers are increasingly watching non-broadcast content and calling for carriage of more independent programming. We believe that consumer demand will sort out the right balance between broadcast and non-broadcast programming.

Thus, in addition to representing the wrong policy outcome, any Commission decision compelling multicast must-carry would contradict two prior Commission decisions and usurp congressional authority. We therefore would object to any Commission decision forcing MVPDs or other video providers to carry multiple broadcast program streams.

Sincerely,



Joe Barton
Chairman
Committee on Energy and Commerce



Fred Upton
Chairman
Subcommittee on Telecommunications
and the Internet

Cc: Commissioner Michael J. Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell